IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

MFA.No. 699 of 1996()

OPMV.108/1987 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT - THIRD RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY CO. LTD., MYSORE, REPRESENTED BY ITS DEPUTY MANAGER, REGIONAL OFFICE, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.GEORGE CHERIAN

RESPONDENTS - CLAIMANT - RESPONDENT :
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1. C.D. VARGHESE, CHAKKIYATHUMADAM KARUKUTTY.

2. JAMES MENDEZ, NO.68, L.I.C., CI & B COLONY, UDAYAGIRI, MYSORE (DELETED)

3. GEORGE MENDEZ, S/O. FRANCIS MENDEZ 1146/2 - 6TH MAIN, VIDHYANIPURAM, MYSORE.

R2 IS DELETED FROM THE PARTY ARRAY AS PER ORDER DTED 23.7.2007 ON I.A. NO.1495 OF AT THE RISK OF THE PETITIONER.

BY ADV. SRI.MPR.NAIR
SRI.GEORGE K.JOSEPH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPELLANT'S EXHIBITS:

EXHIBIT B2 TRUE COPY OF THE AWARD PASSED IN O.P(MV) NO. 110 OF 1987, MOTOR ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM.

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 699 OF 1996

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Dated this the 13th day of August, 2007

J U D G M E N T

The third respondent, New India Insurance Co. Ltd., in O.P(MV) No.108 of 1987 on the file of the Motor Accidents Claims Tribunal, Ernakulam, is the appellant. Appeal is filed against the award passed by the Tribunal directing the appellant to pay the compensation awarded in the case.

2. First respondent, petitioner in the O.P., was the driver of a Tanker Lorry bearing Reg.No. KEF-7540. On 13.11.1986 at about 1.00 a.m. a collision took place between the Tanker Lorry driven by the first respondent and another lorry bearing Reg. No.MEY-6417. Petitioner who was the driver of the Tanker Lorry filed the petition claiming compensation from the owner, driver and Insurer of the offending vehicle alleging that the accident occurred due to the negligence of the driver of that vehicle. It was averred that the lorry bearing Reg. No.MEY-6147 was proceeding from Thrissur to Ernakulam and first respondent was driving his lorry behind the offending vehicle. It was alleged that when

the vehicles reached the place of accident, driver of the offending vehicle suddenly stopped the vehicle without showing any signal and front portion of the lorry driven by the petitioner dashed against the iron rods which were projecting about 3 to 4 metres beyond the body of that vehicle and on account of that action petitioner sustained injuries.

3. Respondents 1 and 2 in the O.P., who are the owner and driver of the offending vehicle, did not appear and contest. Insurer alone contested the matter. The Insurer admitted the policy, but contended that there was no negligence on the part of the driver of the offending vehicle, second respondent in the O.P. It was contended that the petitioner was driving his vehicle without keeping the sufficient distance and as such he was not entitled to claim compensation. It was also contended that the compensation claimed was highly excessive. It was further contended that another person who was the cleaner of the Tanker Lorry driven by the first respondent also sustained injuries and he filed O.P(MV) No.110 of 1987 before the Tribunal claiming compensation impleading the first respondent also and both the cases should be tried jointly.

4. Though the Insurer raised a contention that since both the driver and cleaner of the Tanker Lorry filed petitions claiming compensation, both the cases were to be tried together, both the cases were tried separately. Separate awards were passed in both the cases on 29.2.1996. Appellant had produced a copy of the award passed in O.P(MV) No.110 of 1987 as an additional evidence in this case. It is marked as Exhibit B2. The award passed in that case would show that one Rockey, who was the cleaner in the Tanker Lorry driven by the first respondent, filed a petition claiming compensation impleading the owner, driver and Insurer of the lorry bearing Reg. No.MEY-6417 and also the first respondent, owner and Insurer of the Tanker Lorry. In that case the petitioner in O.P(MV) No.108 of 1997 was arrayed as 4th respondent. Tribunal found that the accident occurred due to the negligence of the drivers of the Tanker Lorry as well as the other lorry. Tribunal found that all the respondents are severally and jointly liable and since the accident occurred due to the negligence of both the drivers, the appellant, Insurer of Lorry bearing Reg. No.MEY-6147 was liable to pay only 50% of the compensation awarded. That is a finding which will

operate as res judicata so far as the first respondent is concerned since he was also a party to the award passed in O.P(MV) No.110 of 1987. Finding of the Tribunal that the accident occurred due to the negligence of the driver of lorry bearing Reg. No.MEY-6147 is modified. It is found that the driver of the Tanker Lorry is also negligent and the Insurer of the offending vehicle is liable to pay one half of the compensation. The award passed by the Tribunal is modified to that extent. Hence the first respondent is entitled to get only 50% of the amount awarded in this case. Tribunal has awarded a sum of 16,300/- as compensation. The petitioner/first respondent is entitled to get only one half of the said amount.

5. In the result, the appeal is allowed in part. The award passed by the Tribunal is modified. It is held that the first respondent/petitioner in O.P(MV) No.108 of 1987 is entitled to get a compensation of Rs.8.150/-. In all other respects, the award passed by the Tribunal will stand confirmed. The appellant shall deposit that amount. If the appellant had deposited any amount in excess of its liability, the same shall be refunded to it.

Civil Miscellaneous Petition No.2759 of 1996 will stand closed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 699 OF 1996

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J U D G M E N T

13TH AUGUST, 2007